IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.27 OF 2007

Shri Vidyadhar S. Ekbote & Anr. ..Applicants.

V/s.

Smt.Vimal Umakant Dharadhar & ors. ..Respondents.

Mr.G.S.Godbole for applicants.

CORAM: A.M.KHANWILKAR,J
DATE : FEBRUARY 12, 2007.

P.C. :

1. Heard counsel for the applicant.

2. I see no reason to depart from the ultimate conclusion reached by the lower Court, in rejecting the application preferred by the applicants for dismissal of the suit, purported to be under Order 7 Rule 11.

2A. The argument canvassed before this Court that, reasons stated in the application are ascribable to the Powers under Order 7 Rule 11(a), does not commend to me. For, the answer to the question whether the cause of action has arisen to the plaintiff to institute suit against the applicants/defendants, is dependant on the issue whether it was open to the plaintiffs to pursue the remedy against the applicants in their own rights. It is only then the

point in issue can be answered against the plaintiffs to hold that the plaintiffs have had no cause of action. Observations made by the lower Court in paragraph-11 of the impugned Judgment, if understood thus, there is no reason to depart from the conclusion reached by the lower Court in rejecting the application preferred by the applicants for rejection of the plaint in exercise of powers under Order 7 Rule 11.

3. While dismissing this revision application, it is made clear that observations made by the trial Court in the impugned Judgment or for that matter in this order shall not influence the outcome of the suit. The suit will have to be decided on its own merits in accordance with the law.

4. At this stage, counsel for the applicants submits that until issue of title is decided in favour of the plaintiffs, present suit ought not to proceed. It will be open to the applicants to take recourse to such other remedy, as may be permissible by law for such relief. That will have to be considered on its own merits.

5. Revision application disposed of on the above terms.